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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,676	04/08/2002	Sam Fong Yau Li	2577-118	7819
6449 7590 02/01/2005				
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER LUCAS, ZACHARIAH				
ART UNIT PAPER NUMBER				
1648				

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 10/019,676	Applicant(s) LI ET AL.
	Examiner Zachariah Lucas	Art Unit 1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 73-91 and 94-100

Claim(s) withdrawn from consideration: 92 and 93

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☒ Other: PTO Form 892


Continuation of 3. Applicant's reply has overcome the following rejection(s): The enablement rejection is withdrawn as to claim 82. All rejections are withdrawn as to claims 101 and 102, which have been cancelled from the application. .

Continuation of 5. does NOT place the application in condition for allowance because: With respect to the traversal of the rejection of the claims 73-91, and 94-102, the Applicant argues that the limitations of claim 82 indicate that the claimed methods are limited to embodiments wherein the Pz crystals contain a metal electrode. The rejection is maintained as to the claims other than claim 82 because, while claim 82 provides this limitation, none of the other claims depend from this claim. Thus, the limitations of claim 82 are not of necessity part of the other claimed inventions. Because there is no requirement in the other claims that the Pz crystals include metal electrodes, and because the presence of claim 82 indicates that the other claims do not require the limitations set forth in this dependent claim, the rejection is maintained.

The Applicant also argues, with respect to the obviousness rejections, that the claimed invention is not the device, apparently conceding that the device was known or obvious, but a method of using the device (and a kit comprising it) for the diagnosis of veterinary diseases. These arguments are not found persuasive. First, as was indicated in the prior actions, the art teaches the use of such devices for the detection of pathogens. It is generally silent as to whether the pathogen is found in humans or in other animals. However, because the references teach the use of such devices, and the claimed methods for the detection of pathogens, the art also renders obvious the use of the methods for veterinary applications. This is because the use of such immunological methods for veterinary diagnosis is well known in the art. See e.g., U.S. Patent 5,306,644 column 16. See also, the teachings of Rajashekara, teaching the detection of infection in animals using immunoassays. Because the art teaches all of the claimed method limitations, and because it is known in the art that immunoassays may be applied for veterinary diagnosis, the teachings of the cited references render obvious the claimed methods and kits. The traversal is therefore not found persuasive, and the rejections are maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Z. Lucas
Patent Examiner


JAMES HOUSEL 1/10/05
SUPERVISOR PATENT EXAMINER
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